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Implementation of Significant Wildlife Habitat Rules under NRPA

Maine Department of Environmental Protection

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JOHN ELIAS BALDACCI
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COMMISSIONER

January 23, 2009

Senator Seth A. Goodall, Senate Chair
Representative Robert S. Duchesne, House Chair
Joint Standing Committee on Natural Resources
Cross Office Building Room 214
Augusta, ME 04333-003

RE: Report to the Legislature on the implementation of Significant Wildlife Habitat rules under the Natural Resources Protection Act

Dear Senator Goodall, Representative Duchesne and Members of the Natural Resources Committee:

In accordance with Resolves 2006, Chapter 183, the Department of Environmental Protection is required to report on the implementation of *Significant Wildlife Habitat Rules* [06-096 CMR Chapter 335], including:

- The number of field determinations to identify significant vernal pools requested by the public and completed by the Department;
- The number of individual permit applications received and the department's response to and status of those applications;
- The number of permit-by-rule notifications regarding significant vernal pool habitats received by the department;
- The number of permit-by-rule notifications regarding significant vernal pool habitats that required individual permits;
- The number and type of voluntary identifications of significant vernal pool habitats submitted to the department and the department's response to those voluntary identifications; and
- Public education and outreach provided by the department.

This report contains information from January 2006, when the definitions of the various wildlife habitats were adopted, to October 1, 2008. The regulation of significant bird habitats became effective on June 6, 2006, and significant vernal pools were regulated as of September 1, 2007. Vernal pool survey data was collected in the spring of 2006 and is included in this report.

FIELD DETERMINATIONS:

To properly document the surveys of vernal pools for purposes of determining their significance, the Department of Inland Fisheries and Wildlife (DIF&W) developed a field survey form. All surveys, whether conducted by DEP staff, DIF&W staff, or other qualified individuals must use this form or at least provide all the data contained therein. A copy of the field survey form is attached for your reference and is also available on the Department's website at:
http://www.maine.gov/dep/blwq/docstand/nrpa/vernalpools/data_collection_form.pdf

When completed by a member of the public, surveys are sent to the DEP, and we then submit to DIF&W staff for review. DIF&W staff enter the data into a database which tracks details of the determination as well as the pool's location. DIF&W's determination of the pools' status is forwarded to the DEP whose staff in turn notify the surveyor and/or the landowner by letter of the determination.

There are 4 categories of a vernal pool's status:

- *Not Significant*, because the pool does not meet the biological criteria;
- *Not Significant*, because the pool does not meet the vernal pool criteria (e.g. not of natural origin);
- *Significant*; and
- *Significant*, but landowner permission was not obtained.

  NOTE: There have been a number of cases, particularly in the spring of 2007, where field surveys were conducted without the surveyor first obtaining landowner permission. The Department determined that the information could be entered into the database, but the pool will not be regulated as significant unless and until the landowner is asked and grants permission for the pool's location to be placed in the map-based database. The Department has made every effort to inform individuals conducting surveys that landowner permission must be obtained before surveying a pool. In addition, the survey form itself points out this issue and requires information related to landowner permission.

As of October 1, 2008, 199 field surveys of vernal pools have been conducted by DEP and DIF&W staff as well as other qualified individuals. "Other qualified individuals" (OQI) are people with training in wetland or wildlife ecology. These individuals include professional consultants, naturalists, and others specifically trained in the identification of qualifying pools and the wildlife observed using them. DIF&W staff screen observer qualifications during their review of all survey data.

Of the 199 pools surveyed, 59 (29.6%) were determined to be Significant, 117 (58.8%) were determined to be Not Significant, and 23 (11.6%) were Significant but no landowner permission was obtained before the survey. Therefore, these 23 pools will not be regulated as Significant unless the landowner grants permission to do so. When both categories of significance are combined just over 40% of surveyed pools met the biological requirements for significance, which is somewhat lower than initial estimates when the regulations were being developed.

Below is a table that further breaks out the survey information.

VERNAL POOL FIELD SURVEY SUMMARY

Surveyor	Not Significant biological criteria	Not Significant pool criteria	Significant	Significant no permission	**TOTAL**
DEP	31	18	27	3	**79 (40%)**
DIF&W	0	0	4	20	**24 (12%)**
OQI	49	19	28	0	**96 (48%)**
TOTAL	**80 (40%)**	**37 (19%)**	**59 (30%)**	**23 (11%)**	**199**

The Department is aware of hundreds of other vernal pool surveys conducted by municipalities collaborating with Maine Audubon Society citizen surveys and by consultants in association with

proposed new or expanded transmission lines that have yet to be submitted. It is anticipated that many of these surveys will be submitted in 2009.

INDIVIDUAL PERMITS:

A total of 114 individual permit applications were submitted to the Department for activities in shorebird, inland waterfowl, tidal waterfowl, and vernal pool habitats. Of these, 88 were approved, 2 were denied, and 11 were withdrawn during the review process. Nine projects were under review and pending as of October 1, 2008.

The 11 project applications that were withdrawn by the applicant occurred during review of the project, when the Department determined, through review of the project, that an approval would not likely be granted. In addition, four applications were deemed incomplete and not accepted for processing. Of these four, one was resubmitted and subsequently approved; one was resubmitted but subsequently withdrawn; and two were never resubmitted.

During the review process, staff worked with applicants to ensure that impacts to significant wildlife habitats were first avoided and second, where impacts are unavoidable, properly minimized. In many cases, this required applicants to eliminate portions of their projects and/or modify the scope or location of their project proposal. In addition, staff review involved working with applicants to provide adequate compensation where necessary to offset unavoidable impacts.

The table below represents the status of individual permit applications, broken down by the type of wildlife habitat involved.

INDIVIDUAL PERMIT APPLICATIONS SUMMARY

Habitat	Received	Approved	Denied	Not Accepted	Withdrawn	Pending
Shorebird	24	16	1	3	4	0
Inland Waterfowl	23	17	0	1	3	2
Tidal Waterfowl	63	53	1	0	4	5
Vernal Pools	4	2	0	0	0	2
TOTAL	**114**	**88 (77%)**	**2 (2%)**	**4 (4%)**	**11 (10%)**	**9 (8%)**

PERMITS BY RULE:

Only 17 permit by rule notifications (PBRs) have been submitted to date for activities in significant vernal pool habitat. Of these, only one was returned as deficient and it was never resubmitted. To date, none of the projects returned as deficient subsequently applied for an individual permit.

In addition, 74 PBRs were submitted for activities in shorebird and inland waterfowl habitat. Of these, seven were returned as deficient and none of these were resubmitted. To date, none of these projects returned as deficient subsequently applied for an individual permit.

EDUCATION AND OUTREACH:

The Department has sought out opportunities to provide information to the public on significant wildlife habitats since the fall of 2005. In addition, many organizations asked for presentations on significant habitats in general or a specific type of habitat, such as vernal pools. The audiences have been diverse, including entities such as conservation groups, municipal/planning officials, contractors, and realtor organizations. A number of efforts were made to educate municipal code enforcement officers through training offered by the State Planning Office. In all, Department staff gave 45 presentations specifically on significant wildlife habitats to more than 2,100 attendees. In addition, another 31 presentations were made on the Natural Resources Protection Act to approximately 1,000 attendees. These presentations, although not specifically focused on wildlife habitats, did include discussion of them as protected natural resources. The table below illustrates the breakdown of our education efforts.

PUBLIC EDUCATION EFFORTS 2005 to 2008

TOPIC	EVENTS	ATTENDEES
Wildlife habitats- general	21	950
Shorebirds	1	20
Waterfowl & Wading Birds	2	115
Vernal Pools	21	1023
Natural Resources Protection Act - general	31	999
TOTAL	**76**	**3107**

In addition the department maintains a web page on all the significant wildlife habitats which is located at: http://www.maine.gov/dep/blwq/docstand/nrpapage.htm. The web page contains a number of explanatory resources on the habitats themselves as well as easy to understand information on the regulatory requirements for these habitats.

The Department has also actively solicited media stories on these habitats, including a television piece that was done in spring of 2007 by “Bill Green’s Maine” and a purchased display advertisement in the spring of 2007 in the major newspaper dailies.

LEGISLATION:

The Resolve also allows for the Committee to report out legislation relating to significant wildlife habitat rules. The Department is not recommending any legislative changes at this time.

Our staff look forward to answering any questions you may have about the report.

Sincerely,

David P. Littell
Commissioner